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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,610	11/19/2001	Anthony J. Hadala	1181-01	7580

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EXAMINER

JACKSON, ANDRE K

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 03/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/992,610	HADALA, ANTHONY J.	
	Examiner	Art Unit	
	André K. Jackson	2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6,8,10,11 and 13-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,8,10,11 and 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on 12/05/03, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3,10,11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa.

Regarding claim 1, Furuhashi et al. disclose a “Keg for draft beer” which has a container having an outlet for a first fluid and an inlet for a second fluid introducing carbon dioxide, a container having a first carbonated fluid region, a first carbonated fluid being present at an original level of the container, the container, for when in use, having a first carbonated fluid at least partially removed from while introducing carbon dioxide to the container forming a second carbonated fluid region (Column 2, Figure 3). What is not disclosed by Furuhashi et al. is placing on the container at least one temperature-measuring device, a temperature-measuring device being located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container. However, Ogawa discloses a “Method and device for detecting a liquid level in a container” which has at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container

after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container (Abstract, Columns 1-2 lines 50-65 and 1-7, Figure 1,3). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container as taught by Ogawa since one would want to accurately know the amount of liquid remaining in a container.

Regarding claims 2 and 3, neither Furuhashi et al. nor Ogawa gives particular times at which the temperatures are observed. However, to observe the temperatures when the first fluid is at least partially withdrawn through the outlet and when the second fluid is introduced through the inlet is well within the purview of the skilled artisan since the container can be observed every minute on the minute or hourly.

Regarding claim 10, Furuhashi et al. disclose where the container is in a refrigerator (Column 2).

Regarding claim 11, Furuhashi et al. disclose where the first fluid is a liquid (Column 2).

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Rait.

Regarding claim 6, Furuhashi et al. does not disclose a temperature-measuring device being adhered to the container. However, Rait discloses in "Liquid level gauge" where the temperature-measuring device is adhered to an outer surface of the container as a magnetic strip (Abstract, Column 2). Therefore, it would have been obvious to the skilled artisan to modify Furuhashi et al. to include where the temperature-measuring device is adhered to an outer surface of the container as a magnetic strip as taught by Rait since some containers are made of metal where a magnet can be applied and this would allow for the device to be on the container regardless of the onset of condensation.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above and in further view of Rait.

Regarding claim 13, Furuhashi et al. does not disclose the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F. However, Rait discloses the step of wiping the temperature-measuring

device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F (Column 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Furuhashi et al. to include the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F as taught by Rait. By adding this feature the user would be able to induce a temperature change.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Hof et al.

Regarding claim 8, neither Furuhashi et al. nor Ogawa discloses a eutectic measuring device. However, Hof et al. disclose a "Temperature indicating compositions of matter" which has a eutectic measuring device (Column 30, line 41). Therefore, the skilled artisan would have been inclined to modify Furuhashi et al. to include a eutectic measuring device as taught by Hof et al. since having a proper temperature range for the liquid is essential. Hof's et al. temperature device is a disposable temperature device.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuhashi et al. in view of Ogawa as applied to claim 1 above, and further in view of Cannon.

Regarding claim 14, neither Furuhashi et al. nor Ogawa disclose a keg having a pressure between 5 and 100 psi. However, Cannon discloses a "Bulk carbonated beverage container" which has a keg having a pressure between 5 and 100 psi (Column 5). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Furuhashi et al. to include a keg having a pressure between 5 and 100 psi as taught by Cannon since this modification would ensure that the container is liquid tight capable of resisting damage from external forces. The temperature is not given by Cannon, but the reference does disclose that the keg is returnable and with that being true the keg would have to experience different temperature changes especially one being in the range of 70°F.

8. Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Regarding claim 15, Brown et al. disclose a temperature-measuring device mounted on a magnetic strip having a width, a height, and a thickness (Figure 1). Brown et al. do not explicitly disclose that the dimensionless ratio of the width to the height is about 0.5 to about 10 to about 1 to about 5. Since the ratio is dimensionless, the Examiner is assuming his own dimensions when reading this claim. Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 16, Brown et al. disclose where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 17, Brown et al. disclose where the device measures temperatures in the range of about 34 °F about 94°F (Column 12, lines 19-37).

Regarding claim 18, Brown et al. disclose where the device measures temperatures in the range of about 34 °F to about 86°F (Column 12, lines 19-37).

Regarding claim 19, Brown et al. disclose a temperature-measuring device mounted on an adhesive strip having a width, a height, and a thickness (Figure 1). Brown et al. do not explicitly disclose that the dimensionless ratio of the width to the height is about 0.5 to about 10 to about 1 to about 5. Since the ratio is dimensionless, the Examiner is assuming his own dimensions when reading this claim. Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 20, Brown et al. disclose where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to

accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 21, Brown et al. disclose where temperature-measuring device measures temperatures in the range of about 34°F to about 94°F (Column 12, lines 19-37).

Regarding claim 22, Brown et al. disclose where the temperature-measuring device measures temperatures in the range of about 34°F to about 86°F.

Response to Arguments

9. Applicant's arguments with respect to claim 1-3,6,8,10,11 and 13-22 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claim 15, Applicant has argued that Brown et al. do not teach the dimensionless ratio and that Brown et al. cannot render the claim obvious. However, there has to be a specific size or range of sizes in which the indicator can be made. de Mars (5,099,688) discloses in "Thermographic method for determining the volume of concrete in a mixing container" the size of a strip according to the invention (Column 3). It would be obvious to adjust the size of the strip according to the size of the container. Furthermore, a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955). Meanwhile, a change in the shape of a

prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Therefore, to have the size of the strip, as a "dimensionless" ratio would be well within the purview of the skilled artisan since a particular length, width and height is needed for each particular container.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to André K. Jackson whose telephone number is (571) 272-2196. The examiner can normally be reached on Mon.-Thurs. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 2856

A.J.

March 6, 2004


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